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HSBC MORTGAGE CORPORATION
(USA) AND PHH MORTGAGE
CORPORATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SABER AHMED and JOHN
MONTELEONE, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

HSBC BANK USA, NATIONAL
ASSOCIATION, and PHH MORTGAGE
CORPORATION,

Defendants.

CASE NO. 5:15-cv-02057-FMO-SP

[Assigned to the Hon. Fernando M.
Olguin]

**STIPULATED PROTECTIVE
ORDER**

1 Plaintiffs, Saber Ahmed and John Mantelone, and Defendants, PHH
2 Mortgage Corporation and HSBC Mortgage Corporation (USA) (“HSBC”)
3 (erroneously sued as HSBC Bank USA, National Association), hereby stipulate
4 and agree to the terms of this Stipulated Protective Order. Accordingly, it is
5 ORDERED:

6 1. A. PURPOSES AND LIMITATIONS

7 Discovery in this action is likely to involve production of confidential,
8 proprietary, or private information for which special protection from public
9 disclosure and from use for any purpose other than prosecuting this litigation may
10 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
11 enter the following Stipulated Protective Order. The parties acknowledge that this
12 Order does not confer blanket protections on all disclosures or responses to
13 discovery and that the protection it affords from public disclosure and use extends
14 only to the limited information or items that are entitled to confidential treatment
15 under the applicable legal principles. The parties further acknowledge, as set forth
16 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
17 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
18 procedures that must be followed and the standards that will be applied when a
19 party seeks permission from the court to file material under seal.

20 B. GOOD CAUSE STATEMENT

21 This action is likely to involve confidential and private consumer
22 information, confidential agreements, confidential and proprietary methods and
23 practices, trade secrets and other valuable research, development, commercial,
24 financial, technical and/or proprietary information for which special protection
25 from public disclosure and from use for any purpose other than prosecution of this
26 action is warranted.

27 Such confidential and proprietary materials and information consist of,
28 among other things, confidential and private information regarding consumers'

1 finances, confidential agreements between businesses, confidential business
2 information, information regarding confidential business methods and practices, or
3 other confidential research, development, or commercial information (including
4 information implicating privacy rights of third parties), information otherwise
5 generally unavailable to the public, or which may be privileged or otherwise
6 protected from disclosure under state or federal statutes, court rules, case decisions,
7 or common law. Accordingly, to expedite the flow of information, to facilitate the
8 prompt resolution of disputes over confidentiality of discovery materials, to
9 adequately protect information the parties are entitled to keep confidential, to
10 ensure that the parties are permitted reasonable necessary uses of such material in
11 preparation for and in the conduct of trial, to address their handling at the end of
12 the litigation, and serve the ends of justice, a protective order for such information
13 is justified in this matter. It is the intent of the parties that information will not be
14 designated as confidential for tactical reasons and that nothing be so designated
15 without a good faith belief that it has been maintained in a confidential, non-public
16 manner, and there is good cause why it should not be part of the public record of
17 this case.

18 2. DEFINITIONS

19 2.1 Action: This pending federal law suit.

20 2.2 Challenging Party: a Party or Non-Party that challenges the
21 designation of information or items under this Order.

22 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
23 how it is generated, stored or maintained) or tangible things that qualify for
24 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
25 the Good Cause Statement.

26 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
27 their support staff).
28

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced
7 or generated in disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve
10 as an expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association,
15 or other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a
17 party to this Action but are retained to represent or advise a party to this Action
18 and have appeared in this Action on behalf of that party or are affiliated with a law
19 firm which has appeared on behalf of that party, and includes support staff.

20 2.11 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13 Professional Vendors: persons or entities that provide litigation
26 support services (e.g., photocopying, videotaping, translating, graphic and design
27 services, preparing exhibits or demonstrations, and organizing, storing, or
28 retrieving data in any form or medium) and their employees and subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover not only
7 Protected Material (as defined above), but also (1) any information copied or
8 extracted from Protected Material; (2) all copies, excerpts, summaries, or
9 compilations of Protected Material; and (3) any testimony, conversations, or
10 presentations by Parties or their Counsel that might reveal Protected Material.

11 Any use of Protected Material at trial shall be governed by the orders of the
12 trial judge. This Order does not govern the use of Protected Material at trial.

13 4. DURATION AND USE AT TRIAL

14 Even after final disposition of this litigation, the confidentiality obligations
15 imposed by this Order shall remain in effect until a Designating Party agrees
16 otherwise in writing or a court order otherwise directs. Final disposition shall be
17 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
18 with or without prejudice; and (2) final judgment herein after the completion and
19 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
20 including the time limits for filing any motions or applications for extension of
21 time pursuant to applicable law.

22 Nothing in this Order shall be construed to affect the use of any document,
23 material, or information at any trial or hearing. A party that intends to present or
24 that anticipates that another party may present Confidential Information at a
25 hearing or trial may bring that issue to the Court’s and parties’ attention by motion
26 or in a pretrial memorandum without disclosing the Confidential Information. The
27 Court may thereafter make such orders as are necessary to govern the use of such
28 documents or information at trial. If Confidential Information is presented at a

1 hearing or trial, that Confidential Information will be presumptively available to
2 members of the public.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or Non-Party that designates information or items for protection under
6 this Order must take care to limit any such designation to specific material that
7 qualifies under the appropriate standards. The Designating Party must designate for
8 protection only those parts of material, documents, items, or oral or written
9 communications that qualify so that other portions of the material, documents,
10 items, or communications for which protection is not warranted are not swept
11 unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations
13 that are shown to be clearly unjustified or that have been made for an improper
14 purpose (e.g., to unnecessarily encumber the case development process or to
15 impose unnecessary expenses and burdens on other parties) may expose the
16 Designating Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that it
18 designated for protection do not qualify for protection, that Designating Party must
19 promptly notify all other Parties that it is withdrawing the inapplicable designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in
21 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
22 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
23 under this Order must be clearly so designated before the material is disclosed or
24 produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions or other pretrial or trial
28 proceedings), that the Producing Party affix at a minimum, the legend

1 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
2 contains protected material. If only a portion or portions of the material on a page
3 qualifies for protection, the Producing Party also must clearly identify the
4 protected portion(s) (e.g., by making appropriate markings in the margins). A
5 Party or Non-Party that makes original documents available for inspection need not
6 designate them for protection until after the inspecting Party has indicated which
7 documents it would like copied and produced. During the inspection and before the
8 designation, all of the material made available for inspection shall be deemed
9 “CONFIDENTIAL.” After the inspecting Party has identified the documents it
10 wants copied and produced, the Producing Party must determine which documents,
11 or portions thereof, qualify for protection under this Order. Then, before producing
12 the specified documents, the Producing Party must affix the “CONFIDENTIAL
13 legend” to each page that contains Protected Material. If only a portion or portions
14 of the material on a page qualifies for protection, the Producing Party also must
15 clearly identify the protected portion(s) (e.g., by making appropriate markings in
16 the margins).

17 (b) for testimony given in depositions that the Designating Party identify the
18 Disclosure or Discovery Material on the record, before the close of the deposition
19 all protected testimony.

20 (c) for information produced in some form other than documentary and for
21 any other tangible items, that the Producing Party affix in a prominent place on the
22 exterior of the container or containers in which the information is stored the legend
23 “CONFIDENTIAL.” If only a portion or portions of the information warrants
24 protection, the Producing Party, to the extent practicable, shall identify the
25 protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive
28 the Designating Party’s right to secure protection under this Order for such

1 material. Upon timely correction of a designation, the Receiving Party must make
2 reasonable efforts to assure that the material is treated in accordance with the
3 provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37.1 et seq.

10 6.3 The burden of persuasion in any such challenge proceeding shall be
11 on the Designating Party. Frivolous challenges, and those made for an improper
12 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
13 parties) may expose the Challenging Party to sanctions. Unless the Designating
14 Party has waived or withdrawn the confidentiality designation, all parties shall
15 continue to afford the material in question the level of protection to which it is
16 entitled under the Producing Party's designation until the Court rules on the
17 challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a Non-Party in connection with this
21 Action only for prosecuting, defending, or attempting to settle this Action. Such
22 Protected Material may be disclosed only to the categories of persons and under
23 the conditions described in this Order. When the Action has been terminated, a
24 Receiving Party must comply with the provisions of section 13 below (FINAL
25 DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a
27 location and in a secure manner that ensures that access is limited to the persons
28 authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

- 5 (a) the Receiving Party’s Outside Counsel of Record in this Action,
6 as well as employees of said Outside Counsel of Record to whom it is reasonably
7 necessary to disclose the information for this Action;
- 8 (b) the officers, directors, and employees (including House
9 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
10 this Action;
- 11 (c) Experts (as defined in this Order) of the Receiving Party to
12 whom disclosure is reasonably necessary for this Action and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 14 (d) the court and its personnel;
- 15 (e) court reporters and their staff;
- 16 (f) professional jury or trial consultants, mock jurors and
17 Professional Vendors to whom disclosure is reasonably necessary for this Action
18 and who have signed the “Acknowledgment and Agreement to Be Bound”
19 (Exhibit A);
- 20 (g) the author or recipient of a document containing the
21 information or a custodian or other person who otherwise possessed or knew the
22 information;
- 23 (h) during their depositions, witnesses ,and attorneys for witnesses,
24 in the Action to whom disclosure is reasonably necessary provided: (1) the
25 deposing party requests that the witness sign the form attached as Exhibit A hereto;
26 and (2) they will not be permitted to keep any confidential information unless they
27 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
28 otherwise agreed by the Designating Party or ordered by the court. Pages of

1 transcribed deposition testimony or exhibits to depositions that reveal Protected
2 Material may be separately bound by the court reporter and may not be disclosed
3 to anyone except as permitted under this Stipulated Protective Order; and

4 (i) any mediator or settlement officer, and their supporting
5 personnel, mutually agreed upon by any of the parties engaged in settlement
6 discussions.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
8 IN OTHER LITIGATION

9 If a Party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items designated in this Action as
11 “CONFIDENTIAL,” that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification
13 shall include a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order
15 to issue in the other litigation that some or all of the material covered by the
16 subpoena or order is subject to this Protective Order. Such notification shall
17 include a copy of this Stipulated Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served
21 with the subpoena or court order shall not produce any information designated in
22 this action as “CONFIDENTIAL” before a determination by the court from which
23 the subpoena or order issued, unless the Party has obtained the Designating Party’s
24 permission. The Designating Party shall bear the burden and expense of seeking
25 protection in that court of its confidential material and nothing in these provisions
26 should be construed as authorizing or encouraging a Receiving Party in this Action
27 to disobey a lawful directive from another court.
28

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party's confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party's
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-
13 Party that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within
21 14 days of receiving the notice and accompanying information, the Receiving
22 Party may produce the Non-Party's confidential information responsive to the
23 discovery request. If the Non-Party timely seeks a protective order, the Receiving
24 Party shall not produce any information in its possession or control that is subject
25 to the confidentiality agreement with the Non-Party before a determination by the
26 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
27 expense of seeking protection in this court of its Protected Material.
28

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has
3 disclosed Protected Material to any person or in any circumstance not authorized
4 under this Stipulated Protective Order, the Receiving Party must immediately (a)
5 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
6 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
7 the person or persons to whom unauthorized disclosures were made of all the terms
8 of this Order, and (d) request such person or persons to execute the
9 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
10 Exhibit A.

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain
14 inadvertently produced material is subject to a claim of privilege or other
15 protection, the obligations of the Receiving Parties are those set forth in Federal
16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
17 whatever procedure may be established in an e-discovery order that provides for
18 production without prior privilege review. Pursuant to Federal Rule of
19 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
20 disclosure of a communication or information covered by the attorney-client
21 privilege or work product protection, the parties may incorporate their agreement
22 in the stipulated protective order submitted to the court.

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the Court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this
27 Protective Order no Party waives any right it otherwise would have to object to
28 disclosing or producing any information or item on any ground not addressed in

1 this Stipulated Protective Order. Similarly, no Party waives any right to object on
2 any ground to use in evidence of any of the material covered by this Protective
3 Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material
6 may only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the court, then the Receiving Party may file the information
9 in the public record unless otherwise instructed by the court.

10 12.4 Monteleone previously filed a Complaint against HSBC in the United
11 States District Court For The Northern District of Illinois Eastern Division. The
12 Court entered an Agreed Confidentiality Order in that action. HSBC and PHH (in
13 response to a third-party subpoena) produced documents and marked some of those
14 documents as Confidential under the Agreed Confidentiality Order. The Parties
15 agree that the documents previously produced in that action that were marked as
16 Confidential are now considered designated as CONFIDENTIAL under this
17 Stipulated Protective Order and that the other provisions of this Stipulated
18 Protective Order apply to those documents.

19 13. FINAL DISPOSITION

20 After the final disposition of this Action, as defined in paragraph 4, within
21 60 days of a written request by the Designating Party, each Receiving Party must
22 return all Protected Material to the Producing Party or destroy such material. As
23 used in this subdivision, "all Protected Material" includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of the
25 Protected Material. Whether the Protected Material is returned or destroyed, the
26 Receiving Party must submit a written certification to the Producing Party (and, if
27 not the same person or entity, to the Designating Party) by the 60 day deadline that
28 (1) identifies (by category, where appropriate) all the Protected Material that was

1 returned or destroyed and (2) affirms that the Receiving Party has not retained any
2 copies, abstracts, compilations, summaries or any other format reproducing or
3 capturing any of the Protected Material. Notwithstanding this provision, Counsel
4 are entitled to retain an archival copy of all pleadings, motion papers, trial,
5 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
6 and trial exhibits, expert reports, attorney work product, and consultant and expert
7 work product, even if such materials contain Protected Material. Any such archival
8 copies that contain or constitute Protected Material remain subject to this
9 Protective Order.

10 14. Any violation of this Order may be punished by any and all
11 appropriate measures including, without limitation, contempt proceedings and/or
12 monetary sanctions.

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14 DATED this 18th day of May, 2017.

DATED this 18th day of May, 2017.

15 TERRELL MARSHALL LAW
16 GROUP PLLC

BALLARD SPAHR LLP

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20 *Attorneys for Plaintiffs*

21
22 All signatories listed on whose behalf this filing is submitted concur in the filing's
23 content and have authorized the filing (L.R. 5-4.3.4(a)(2)(i)).
24

25 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

26
27 DATED: May 22, 2017



Honorable Sheri Pym
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case between Plaintiffs, Saber Ahmed and John Mantelone, and
8 Defendants, PHH Mortgage Corporation and HSBC Mortgage Corporation (USA)
9 (“HSBC”) (erroneously sued as HSBC Bank USA, National Association), Case
10 No. 5:15-cv-02057-FMO-SP. I agree to comply with and to be bound by all the
11 terms of this Stipulated Protective Order and I understand and acknowledge that
12 failure to so comply could expose me to sanctions and punishment in the nature of
13 contempt. I solemnly promise that I will not disclose in any manner any
14 information or item that is subject to this Stipulated Protective Order to any person
15 or entity except in strict compliance with the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District
17 Court for the Central District of California for the purpose of enforcing the terms
18 of this Stipulated Protective Order, even if such enforcement proceedings occur
19 after termination of this action. I hereby appoint _____
20 [print or type full name] of _____ [print
21 or type full address and telephone number] as my California agent for service of
22 process in connection with this action or any proceedings related to enforcement of
23 this Stipulated Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 18th day of May 2017, I electronically filed a true
3 and correct copy of the foregoing **STIPULATED PROTECTIVE ORDER**
4 through the Court's CM/ECF system, which will send a notice of electronic filing
5 to the following:

6
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22
23 /s/ Scott M. Pearson
24 Scott M. Pearson
25
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27
28